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6 Attorneys for Plaintiffs, District Council 16  
7 Northern California Health and Welfare Trust Fund, et al.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 DISTRICT COUNCIL 16 NORTHERN  
11 CALIFORNIA HEALTH AND WELFARE  
TRUST FUND; and its JOINT BOARD OF  
12 TRUSTEES; CHRIS CHRISTOPHERSEN and  
JOHN MAGGIORE, Trustees;

13  
14 BAY AREA PAINTERS AND TAPERS  
PENSION TRUST FUND, and its JOINT BOARD  
15 OF TRUSTEES; CHRIS CHRISTOPHERSEN  
and JEANNIE SIMPELO, Trustees;

16  
17 DISTRICT COUNCIL 16 NORTHERN  
CALIFORNIA JOURNEYMAN AND  
18 APPRENTICE TRAINING TRUST FUND, and its  
JOINT BOARD OF TRUSTEES; CHRIS  
19 CHRISTOPHERSEN and JEANNIE SIMPELO,  
Trustees,

20 Plaintiffs,

21 v.

22  
23 NORTHERN PACIFIC DRYWALL, INC., a  
California corporation, and DARRIN M. SPANN,  
24 an individual,

25 Defendants.

Case No.

**COMPLAINT**

Parties

1. The District Council 16 Northern California Health and Welfare Trust Fund (“Health Fund”); Bay Area Painters and Tapers Pension Trust Fund, including the Bay Area Painters and Tapers Pension Trust Fund Annuity Plan (together “Pension Funds”); and District Council 16 Northern California Journeyman and Apprentice Training Trust Fund (“Apprentice Fund”) are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 (“ERISA”) § 3(3), 29 U.S.C. § 1002(3). The Joint Board of Trustees (“Trustees”) of said Funds are the named fiduciaries of the Funds under ERISA § 302(a), 29 U.S.C. § 1002(a). Chris Christophersen and John Maggiore are Trustees, and fiduciaries, of the Health Fund. Chris Christophersen and Jeannie Simpelo are Trustees, and fiduciaries, of the Pension Fund and Apprentice Fund. The Health Fund, Pension Funds, Apprentice Fund, and their respective Trustees and fiduciaries are collectively referred to herein as “ERISA Plaintiffs” or “Plaintiffs.”

2. Northern Pacific Drywall, Inc. a California corporation, (“Northern Pacific Drywall”), and Darrin M. Spann, an individual (“Spann,” collectively with Northern Pacific Drywall, “Defendants”), are employers by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

Jurisdiction

3. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

4. Jurisdiction exists in this Court over all the claims by virtue of the Labor Management Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and conditions of a valid Bargaining Agreement.

5. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they arise out of a common nucleus of operative facts that form the basis of the federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

Venue

6. Venue is conferred upon this Court by § 502, 29 U.S.C. § 1132. Where an action is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs' discretion, in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this district at their principal place of business in Dublin, California. Thus, jurisdiction and venue are properly grounded with this Court.

7. Venue exists in this Court with respect to the claims under LMRA § 301, 29 U.S.C. § 185, as this Court has jurisdiction over the parties, as District Council 16 of the International Union of Painters and Allied Trades (the "Union") maintains its principal place of business in this district, its duly authorized officers or agents are engaged in representing employee members in this district, and the claims arise in this district.

Intradistrict Assignment

8. The basis for assignment of this action to this Court's Oakland Division is that all of the events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA Plaintiffs' Funds and the Bargained Entities are administered, and where Defendants therefore failed to fulfill their statutory and contractual obligations to Plaintiffs.

Bargaining Agreements

9. Defendant Northern Pacific Drywall entered into the Northern California Drywall Finishers Master Agreement ("Bargaining Agreement") between the District Council 16 of the International Union of Painters and Allied Trades (the "Union") and the Wall and Ceiling Alliance, requiring employer contributions to Plaintiffs' ERISA Funds, to the Union for union dues, and to the other plans more fully described in the Bargaining Agreement. In addition, Defendant Spann entered into the Agreement of Employers Regarding Bay Area Painters and Tapers Trust Funds, under which Defendant Spann agreed to be personally and individually liable for amounts owed under the Bargaining Agreement to Plaintiffs by Defendant Northern Pacific Drywall. Plaintiffs are third party beneficiaries of the Bargaining Agreement.

10. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to

1 collect monies due by Defendants to the following plans: the IUPAT Finishing Trades Institute, the  
2 IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Industry Fund, the  
3 Skills, Safety, Supervisor & Survival Training Awards Recognition (STAR) Program, Inc., the  
4 Vacation/Holiday Fund, and the IUPAT Political Action Together-Political Committee (collectively  
5 referred to herein as the “Bargained Entities”). Plaintiffs’ Boards of Trustees have been authorized to  
6 collect and distribute monies due to the Bargained Entities as well as dues due to the Union under the  
7 Bargaining Agreement and Trust Agreements.

8 11. Under the Bargaining Agreement and the governing documents of ERISA Plaintiffs (the  
9 “Trust Agreements”), which are incorporated into the Bargaining Agreement and made binding on  
10 Defendants, Defendants are required to regularly pay to ERISA Plaintiffs, the Bargained Entities, and  
11 the Union, certain sums of money, the amounts of which are determined by the hours worked by  
12 Defendant Northern Pacific Drywall’s employees. Contributions are due on the fifteenth (15<sup>th</sup>) day of  
13 the month following the month hours were worked, and considered delinquent if not received by the last  
14 day of that month. Defendants are also required, pursuant to the Bargaining and Trust Agreements, to  
15 pay liquidated damages in the amount of ten percent (10%) for each delinquent contribution, but in the  
16 amount of twenty percent (20%) for each delinquent contribution which is the subject of litigation.  
17 Moreover, the Bargaining and Trust Agreements provide that interest accrues on delinquent  
18 contributions at the rates reasonably set by the Trustees from the day contributions become delinquent,  
19 which is the first (1<sup>st</sup>) day of the month following the month in which payment was due, until paid.

20 12. The Bargaining Agreement further requires Defendant Northern Pacific Drywall to  
21 maintain time records or time cards, and to submit any and all relevant records to Plaintiffs for  
22 examination to determine whether Defendants are making full and prompt payment of all sums required  
23 to be paid by it to Plaintiffs. Should an audit of Defendant Northern Pacific Drywall’s records reveal  
24 Defendants have failed to provide full and prompt payment of all sums due, Defendants must reimburse  
25 Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the  
26 Bargaining and Trust Agreements.

#### 27 Factual Allegations

28 13. Defendants have failed and refused to pay contributions reported as due for work

1 performed by Defendants' employees during the months of July 2018, and March 2019 through  
2 September 2019. Liquidated damages and interest have been incurred and are owed to Plaintiffs for the  
3 unpaid contributions for these months.

4 14. Defendants have also failed to pay liquidated damages and interest for late-paid  
5 contributions for hours worked by its employees during the months of February 2019.

6 15. Plaintiffs are also entitled to recover any and all contributions, and all liquidated damages  
7 and interest on delinquent contributions, found due on timecards, audit, or otherwise including estimated  
8 contributions for months Defendant Northern Pacific Drywall failed to report to Plaintiffs, through the  
9 time of Judgment. Plaintiffs reserve the right to conduct an audit to determine whether there are any  
10 additional amounts due from Defendants.

11 **FIRST CAUSE OF ACTION**  
12 **For Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and**  
13 **Costs Against Defendant**

14 16. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 15, above.

15 17. Defendants have a contractual duty to timely pay the required contributions to Plaintiffs  
16 and the Bargained Entities, and to timely pay dues to the Union, pursuant to the Bargaining Agreement  
17 and Trust Agreements. Defendant Northern Pacific Drywall also has a contractual duty under the  
18 Bargaining Agreement, and Trust Agreements incorporated therein, to permit an audit of its records to  
19 determine whether it is making full and prompt payment of all sums required to be paid by it to  
20 Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

21 18. In addition, Defendants have a statutory duty to timely make the required payments to  
22 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

23 19. By failing to make the required payments to Plaintiffs, Defendants breached the  
24 Bargaining Agreement and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

25 20. Defendants' failure and refusal to pay the required contributions was at all times, and still  
26 is, willful. Defendants continue to breach the Bargaining Agreement, and incorporated Trust  
27 Agreements, by failing to report and pay all amounts owed as alleged. Said refusal is unjustified and  
28 done with knowledge and intent.

21. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and

irreparable injury, loss and damage unless Defendants are ordered specifically to perform all obligations required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and is restrained from continuing to refuse to perform as required thereunder.

22. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

23. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendants. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

#### Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendants as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Entities, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

ii. To the Union in accordance with the Bargaining Agreement.

(b) Liquidated damages on all unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all unpaid contributions at the rates set in accordance with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132 (g)(2)(B).

2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in

1 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance  
2 with the Bargaining Agreement for all Bargained Entities; and with LMRA § 301, 29 U.S.C. § 185, for  
3 all Plaintiffs.

4 3. For an order,

5 (a) requiring that Defendants comply with their obligations to Plaintiffs under the  
6 terms of the Bargaining Agreement and the Trust Agreements;

7 (b) enjoining Defendants from violating the terms of those documents and of ERISA;  
8 and;

9 (c) enjoining Defendants from disposing of any assets until said terms have been  
10 complied with, and from continuation or operating of Defendants' business until said terms have been  
11 complied with.

12 4. That the Court retain jurisdiction of this case pending compliance with its orders.

13 5. For such other and further relief as the Court may deem just and proper.

14 DATED: December 11, 2019

SALTZMAN & JOHNSON LAW CORPORATION

15 By: \_\_\_\_\_/S/

16 Eric K. Iwasaki  
17 Attorneys for Plaintiffs, District Council 16 Northern  
18 California Health and Welfare Trust Fund, et al.  
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